

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150338
	:	TRIAL NO. B-0700370-C
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
LAMARR WASHINGTON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Lamarr Washington appeals from the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Set Aside Judgment of Sentence Pursuant to Ohio R.C. 2941.25.” We affirm the court’s judgment as modified.

Washington was convicted in 2007 upon guilty pleas to multiple counts of aggravated burglary, aggravated robbery, rape, and kidnapping. He did not timely appeal his convictions. But in 2015, he challenged his convictions by filing with the common pleas court a motion captioned “Motion to Set Aside Judgment of Sentence Pursuant to Ohio R.C. 2941.25.” In his motion, Washington sought resentencing on the grounds that the trial court had erred in sentencing him for allied offenses of similar import that were subject to merger under R.C. 2941.25, and that his trial counsel had been constitutionally ineffective in failing to challenge his sentences on that basis.

In this appeal, Washington advances a single assignment of error. Because the assignment of error essentially restates the grounds for relief advanced in his

postconviction motion for resentencing, it may fairly be read to challenge the denial of relief on those grounds. We overrule the assignment of error, because the common pleas court had no jurisdiction to entertain the motion.

In his motion, Washington did not designate a statute or rule under which he might be afforded the relief sought. The common pleas court was, therefore, free to “recast” the motion “into whatever category necessary to identify and establish the criteria by which the motion should be judged.” *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus.

Under R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, a common pleas court may grant a petitioner relief from his conviction upon proof of a constitutional violation during the proceedings resulting in his conviction that rendered his conviction void or voidable. *See* R.C. 2953.21(A)(1); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). In support of his allied-offenses and ineffective-counsel claims, Washington invoked the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Thus, his motion may fairly be read to seek resentencing based on constitutional violations in the proceedings leading to his conviction. Accordingly, the claims were reviewable by the common pleas court under the standards provided by the postconviction statutes.

But Washington filed his petition well after the time prescribed by R.C. 2953.21(A)(2) had expired. And he failed to satisfy the jurisdictional requirements for entertaining a late postconviction petition, when the record does not, as it could not, demonstrate that, but for the claimed sentencing error and trial counsel’s alleged ineffectiveness in that regard, “no reasonable factfinder would have found [Washington] guilty of the offense[s] of which [he] was convicted.” R.C. 2953.23(A)(1)(b). Therefore, the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Washington’s late postconviction claims.

Nor could the common pleas court have entertained those claims under its jurisdiction to correct a void judgment. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. Neither the claimed allied-offenses error nor trial counsel's alleged ineffectiveness, even if demonstrated, would have rendered Washington's convictions void. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 3 (holding that an allied-offenses challenge may be forfeited); *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989) (holding that a conviction may be reversed on the ground of ineffective assistance of counsel only upon proof of an outcome-determinative deficiency in counsel's performance).

Because the common pleas court had no jurisdiction to entertain Washington's postconviction motion, his motion was subject to dismissal. *See* R.C. 2953.21(C) and 2953.23(A). Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect the dismissal of the motion. And we affirm the judgment as modified.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., HENDON and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on August 10, 2016
per order of the court _____.

Presiding Judge